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Counsel, your appearances for the record.

MS. HOPKINS: Peyton Hopkins for the plaintiff.

There is a motion to stay, which is Document

1 Number 23 -- well, let me do it another way.

2 I have defendant Garcia-Fernandez's motion for a
3 narrowly tailored stay of discovery, which is Document 77.

4 Defendant Harris County's opposed motion to stay,
10:35AM 5 which is Document Number 80.

6 Defendant Estrada's opposed and amended motion to
7 stay proceedings, which is Document 81.

8 The Ayers-Woods and Kenneth Anderson, Sr.'s
9 motion to intervene, which is Document Number 43.

10:35AM 10 I have another motion to stay proceedings from
11 defendant Alobaidi, which is Document Number 85.

12 Plaintiffs' response to defendants' motion to
13 stay proceedings, which is Document 86.

14 There are various other motions. And then by way
10:36AM 15 of motions that are pending, I think I've mentioned some, but
16 I'm just going to go through the document numbers.

17 I have motion to stay at Document 23.

18 Motion to dismiss complaint, which is
19 Document 26.

10:36AM 20 Motion to dismiss for failure to state a claim at
21 Document 27.

22 A motion to intervene at 43.

23 Motion to dismiss at Document 46.

24 Motion to dismiss for failure to state a claim,
10:36AM 25 Document 47.

1 Unopposed amended motion at Document 63.

2 Another motion to intervene at Document 63.

3 Amended motion to seal earlier complaints, which
4 is Document 64.

10:37AM

5 Motion to dismiss for failure to state a claim,
6 Document 69.

7 Another motion to dismiss at Document Number 70.

8 The motion to stay discovery at 77.

9 Opposed motion to stay discovery, Document 80.

10:37AM

10 Amended motion to stay, 81.

11 And opposed motion to stay at 85.

12 Were there any motions that any lawyer here has
13 that I did not mention and the various replies of course?

14 MS. CALLAN: None from Harris County, Your Honor.

10:37AM

15 THE COURT: Very well.

16 Thank you. You may be seated.

17 Well, by way of preference for the Court, let's
18 see who's in and who's out.

19 As to the motion to intervene, Counsel, what's
20 the basis for your motion for intervention?

10:38AM

21 MR. SCOFIELD: Your Honor, my clients are statutory
22 beneficiaries under the Texas wrongful death statute. They
23 have a claim for loss of consortium.

24 THE COURT: And who are the intervenors?

10:38AM

25 MR. SCOFIELD: The parents.

1 THE COURT: The parents.

2 MR. SCOFIELD: Of the decedent.

3 THE COURT: Has the estate been probated?

4 MR. EDWARDS: Pending probate, Judge.

10:38AM 5 THE COURT: And are the parents listed as the
6 beneficiaries of the estate, or do you know?

7 MR. EDWARDS: So all the heirs have been listed as the
8 beneficiaries of the estate. It's my understanding that the
9 parents would not be heirs, but he had three children so they
10 are listed. And apparently he had an estranged wife who is
11 also listed.

12 THE COURT: Are any of those seeking to be the personal
13 representative of the estate in the probate?

14 MR. EDWARDS: Yes. Kenneth, Jr., his son, is seeking
10:38AM 15 that status.

16 THE COURT: How old is he? Do you know?

17 MR. EDWARDS: He's 25.

18 THE COURT: Okay. He's an adult.

19 MR. EDWARDS: Yeah.

10:39AM 20 THE COURT: Have the intervenors sought relief in any
21 other court?

22 MR. SCOFIELD: No, Your Honor.

23 THE COURT: And it's just lack of consortium? Is that
24 it?

10:39AM 25 MR. SCOFIELD: Well, and they're beneficiaries under

1 the wrongful death statute as well.

2 THE COURT: Counsel for the plaintiff, what say you,
3 sir?

4 MR. EDWARDS: We don't have any objection to the
10:39AM 5 intervention.

6 THE COURT: Any of the defendants?

7 MS. CALLAN: No objections from the defendant
8 Harris County.

9 MR. ADLER: No objection from Alobaidi, Your Honor.

10:39AM 10 MR. BUTT: No objection from Estrada, Your Honor.

11 MR. KUNIANSKY: No objection from Garcia.

12 MS. BRADLEY: Your Honor, this is Suzanne Bradley. I
13 apologize.

14 THE COURT: You've got to speak up.

10:40AM 15 MS. BRADLEY: I'm sorry. This is Ms. Bradley.

16 THE COURT: Just a moment.

17 (Brief pause in the proceedings.)

18 THE COURT: All right. You're going to have to speak
19 up because we're having a hard time hearing you.

10:40AM 20 Could you please, first of all, make your
21 appearance for the record.

22 MS. BRADLEY: Yes. This is Suzanne Bradley. I
23 represent Deputy Page, Victor Page.

24 THE COURT: All right. I'm still having a very
10:40AM 25 difficult time hearing you. I heard that, that you're

1 representing Deputy Page.

2 And do you have any objections to the motion to
3 intervene?

4 MS. BRADLEY: No.

10:40AM

5 THE COURT: Very well. The Court, having heard the
6 motion to intervene and having heard no objection, the motion
7 to intervene is hereby granted.

8 Counsel, welcome to the party.

9 MR. SCOFIELD: Thank you, Your Honor.

10:41AM

10 THE COURT: Next, turning the Court's attention to the
11 motion to stay.

12 The Court reviewed the motions to stay. The
13 Court is aware that various defendants have asserted a
14 Fifth Amendment privilege.

10:41AM

15 As the Court advised the parties the last time
16 that they were here, the Court has a very similar case pending
17 before it, the *Tuttle versus City of Houston* case.

10:41AM

18 In that particular case, the Court entered an
19 order addressing these same issues and allowed a limited amount
20 of discovery that did not affect the defendants' ability -- the
21 individual defendants' ability to plead the Fifth Amendment.

10:42AM

22 The Court, unless it hears something different,
23 intends to proceed along those same lines. Specifically I know
24 that there's probably investigations that have taken place that
25 perhaps have reports regarding what happened. Perhaps that

1 discovery can take place.

2 But as to the depositions of any kind or any
3 particular written discovery to the indicted defendants or
4 defendants asserting the Fifth Amendment privileges, the Court
10:42AM 5 will stay that particular discovery.

6 Until the Court hears or allows some discovery to
7 go forward, the Court will also stay its consideration of the
8 motions to dismiss. The Court would like to get a full picture
9 of what's before it before moving forward.

10:43AM 10 I believe that if you're going to ask the Court
11 to kick the plaintiffs out of court, then at the very least the
12 plaintiffs should have the opportunity to know the full picture
13 and include that information in its response to the motions to
14 dismiss.

10:43AM 15 And so, with that being said, I'll hear from the
16 parties on anything specific that they need to weigh in on.

17 First, the plaintiff.

18 MR. EDWARDS: So just to be clear --

19 THE COURT: Counsel, pull your mike in closer to you.

10:43AM 20 MR. EDWARDS: Sorry, Judge.

21 So no depositions will be taken in the case until
22 the Court issues an order otherwise.

23 THE COURT: Correct.

24 MR. EDWARDS: Okay. No written discovery to be served
10:43AM 25 on any indicted defendants or defendants asserting a

1 Fifth Amendment privilege --

2 THE COURT: Correct.

3 MR. EDWARDS: -- until the Court issues an order
4 otherwise.

10:43AM

5 And then we didn't talk about whether there might
6 be some additional motions coming. Can we also have a
7 condition that no other motions to dismiss, because they've all
8 filed motions to dismiss, nothing like that can be filed until
9 the Court says otherwise?

10:44AM

10 THE COURT: No. They can file the motions to dismiss.
11 The Court just won't take them up.

12 And so to the extent that they want to put them
13 on file and they're there before the Court, I don't want to
14 stay pleading practice. I'm happy to have those, but they're
15 just going to be put on the back burner until we can
16 appropriately reach them.

10:44AM

17 MR. EDWARDS: Understood.

18 THE COURT: Anything else, sir?

19 MR. EDWARDS: Nothing else.

10:44AM

20 THE COURT: Okay. From the defense?

21 MS. CALLAN: Jennifer Callan on behalf of
22 Harris County.

23 Your Honor, we would ask that a protective order
24 be entered because there has been indication from the
25 plaintiffs that they intend to try this case in the media and

10:44AM

1 because the criminal investigation is pending and it could
2 interfere with the prosecution of the potential deputies, we
3 would ask for a gag order and/or a protective order.

4 THE COURT: I can tell you right now I'm not entering a
10:44AM 5 gag order. That's not going to happen.

6 Lawyers on both sides have been known to issue
7 statements to try to chill the other side, see the prosecution
8 or defense of a case.

9 My expectation, however, of officers of this
10:45AM 10 Court is that they're not going to take such actions that would
11 curtail the wheels of justice.

12 We now know that these defendants are potentially
13 facing criminal charges and we know that the jury pool of
14 Harris County is going to be out there reading news reports,
10:45AM 15 watching news reports.

16 And I would suggest being officers of this Court
17 that your words and actions should be tailored such that the
18 wheels of justice can turn unmolested by your words or actions.

19 That's not a gag order. That's sage advice and
10:45AM 20 so be wise about that.

21 Now, if there comes a time when the Court needs
22 to be more aggressive, I'm happy to consider specific instances
23 of comments or actions that this Court needs to address.

24 Counsel, anything else?

10:46AM 25 MS. CALLAN: In regards to a protective order, I

1 realize the Court has a standard form. I presume the Court
2 will just direct the parties to attempt to continue to discuss
3 that; is that correct?

4 THE COURT: What do you envision needs to be under a
5 protective order in this case?

6 MS. CALLAN: At this time, Your Honor, because the
7 criminal investigation and the administrative investigation are
8 still pending, as the Court directed me, we did get the autopsy
9 report. It is now in my possession as of Monday.

10 All of that is still pending. The case is in
11 review with the chain of command at the homicide division of
12 the sheriff's department and it will be going to the district
13 attorney's office.

14 So I would like to mark that confidential at this
15 point because I don't know what's going to happen, and I don't
16 want to interfere with that potential prosecution.

17 THE COURT: Understood.

18 Counsel, what say you?

19 MR. EDWARDS: There was also a confidentiality order, I
20 believe, that was issued in the *Tuttle* case and so we've been
21 negotiating a very similar format, nearly identical. So I
22 think we can come to some accommodation on that.

23 THE COURT: Sounds good.

24 And the one thing the Court does not expect to
25 see is where the Court has allowed narrowly tailored discovery

1 to go forward, for those documents to appear in public,
2 specifically items like the autopsy, because that could taint a
3 jury pool.

4 And more importantly, by way of what the public
10:47AM 5 needs to know at this point in time, given the fact that these
6 potential criminal charges are pending, I don't think that's
7 for consumption right now.

8 However, by allowing you to get access to it, it
9 allows you to work on the prosecution of your case.

10:48AM 10 So how close are you on this agreement, do you
11 think, time-wise?

12 MR. EDWARDS: I think we could have it worked out by
13 Monday and filed.

14 THE COURT: All right. By close of business on
10:48AM 15 Wednesday, no later, present to the Court a joint order for the
16 Court's signature.

17 Counsel, anything else?

18 MS. CALLAN: Not from the County, Your Honor.

19 THE COURT: Anything from the individual defendants?

10:48AM 20 MR. ADLER: Not from Alobaidi, Your Honor.

21 MR. BUTT: Nothing from Estrada, Your Honor.

22 MR. KUNIANSKY: Nothing from Garcia, Your Honor.

23 THE COURT: Counsel on the phone?

24 MS. BRADLEY: Nothing from Deputy Page, Your Honor.

10:48AM 25 THE COURT: Counsel, are there any motions that this

1 Court needs to give its attention to that it has not yet
2 addressed in our discussion this morning?

3 MR. EDWARDS: Nothing from plaintiffs.

4 MS. CALLAN: Nothing from defendant Harris County.

5 MR. ADLER: Nothing from Alobaidi, Your Honor.

6 MR. KUNIANSKY: Nothing from Garcia, Your Honor.

7 MR. BUTT: Nothing from Estrada, Your Honor.

8 THE COURT: The two-and-a-half hours I put in on the
9 *Tuttle* case resulted in a 15-minute hearing here today so
10 that's all good.

11 All right, Counsel. Having heard nothing else
12 for this Court's attention this morning, thank you. We're
13 adjourned. You're excused.

14 THE LAW CLERK: All rise.

15 (The proceedings were adjourned.)

16 * * * *

17 REPORTER'S CERTIFICATE

18 I, Lanie M. Smith, CSR, RMR, CRR, Official
19 Court Reporter, United States District Court, Southern District
20 of Texas, do hereby certify that the foregoing is a true and
21 correct transcript, to the best of my ability and
understanding, from the record of the proceedings in the
above-entitled and numbered matter.

22 /s/ Lanie M. Smith
23 Official Court Reporter
24
25

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